

# OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION

## HVAC TECHNICIAN SERVICES

Solicitation # GM-08-S-0922-FM

Addendum No. 2

Issued: October 06, 2008

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This Addendum Number 02 is issued by e-mail on October 06, 2008. Except as modified hereby, the Request for Proposals (“RFP”) remains unmodified.

### Item #1

**Requests for Information:** Below is a list of questions about this Project and the Office’s responses.

1. Upon arriving at the site and troubleshooting a problem that requires the purchase of repair parts, is there a monetary level or ceiling at which the contractor is authorized to purchase repair parts and if there is a limit will DCPS provide a representative with authority to authorize parts procure during and after normal working hours for repairs parts that exceed that threshold? **Response: After award but prior to signing the contract, OPEFM and the Contractor will agree upon a set of procedures that describe approval levels applicable for work. It is contemplated that these procedures will require the Contractor to seek OPEFM’s approval if the estimated cost of a repair exceeds an agreed upon amount. We have slightly revised the Form of Contract to address this concept. (Please see Sections 3.4 of the revised Form of Contract attached hereto.)**
2. Does each site have a building engineer assigned that will be on-site to allow access to the schools machinery spaces? **Response: In general all facilities have personnel assigned to them during normal hours, 7 am to 8 pm, that will provide access to the facilities. After-hours access can be arranged at any facility at any time necessary.**
3. Will building engineers be on-site for other than normal working hour emergencies? **Response: Access procedures will be established for work required outside of normal working hours. In general, after-hours access can be arranged at any facility at any time necessary**
4. Will purchase orders be issued by DCPS at the time a request for service repairs is called in? **Response: No. Individual purchase orders will not be issued for service calls. The contract will be funded at a not-to-exceed amount that should be sufficient for the entire year. Service calls will be billed against this NTE amount.**

5. Who is responsible for the disposal of used refrigeration oil? **Response: The contractor will be responsible for the disposal of used refrigeration oil.**
6. Does DCPS have refrigeration recovery tanks at any sites? **Response: DCPS/OPEFM does not have refrigeration recovery tanks at any site.**
7. Are pressure vessel repairs subject to inspection by a DC inspector, or should the contractor provide a certified independent inspector for inspection of pressure vessel repairs? **Response: Pressure vessel repairs are subject to inspection by the DCRA Chief Boiler Inspector. Independent inspections are not permitted.**
8. Are any of the sites heating or cooling equipment controlled or monitored through an energy management system, and if so can you provide the sites and manufacturer?  
**Response: Yes, see list below.**

<b>School</b>	<b>EMS System</b>
Barnard	Tracer Summit
Bell Lincoln	Johnson Control - Metasys
Bowen	Johnson Control - Metasys
Brightwood	Siemens
Cardozo	TBD
Cleveland	Tracer Summit
Food Service	Confront Link Control
Garrison	Breachmark
Key	ASI
Luke C. Moore	Johnson Control - Metasys
McKinley	Carrier
Kelly Miller	Johnson Control - Metasys
Miner	Johnson Control - Metasys
Noyes	Advance Power Control/Backtalk-1.1
Oyster	Circom
W. B. Patterson	Tracer Summit
Randle Highland	Johnson Control - Metasys
Raymond	Siemens
Thomson	Siemens
Tyler	Johnson Control - Metasys
Walker Jones	Siemens
J. O. Wilson	Tracer Summit
Phelps	TBD
Hardy	Johnson Control - Metasys
Sousa	TBD

9. Is there adequate parking for service trucks at each site? **Response: Parking at many sites is limited; however, we anticipate that on-site parking will be available.**

10. Are there a minimum number of hours that can be charged for after hour's emergency repairs? **Response: No.**
11. Is there a computerized maintenance management system in place that has documented the maintenance at each site, and is warranty information available? **Response: No.**
12. Is there an asbestos management plan in place at DCPS? **Response: Yes. The Contractor will not be required to perform hazmat abatement. All abatement work will be performed by others.**
13. Is DCPS participating in any interruptible programs for gas/oil changeovers? **Response: No. All schools use natural gas except Harrison and Logan which use fuel oil exclusively.**
14. Reference B.1.2, page 4 of 20. Does the contractor get reimbursed for travel time to and from the service calls after the technicians are dispatched? **Response: Yes. Reasonable travel time will be reimbursed.**
15. Reference B.2.3 page 5 of 20. Is there a monetary value of anticipated repairs for which the Contractor must receive advance authorization from the DC Officials before proceeding with emergency or permanent repairs? If so, how does this process work? **Response: Yes. As noted above, the Contractor and OPEFM will work out these procedures after award but prior to signing the contract. In general, we envision three authorization levels. Tier 1 will encompass those services calls that are estimated to cost less than \$500. The Contractor will be authorized to perform such work without any further approval from OPEFM. Tier 2 will encompass those service calls that cost between \$500 and \$2,500. The Contractor will be required to confirm that the work can be completed for this amount and will be required to contact OPEFM prior to undertaking the work. Tier 3 will encompass work that is estimated to cost more than \$2,500. The Contractor will be required to provide a written estimate prior to proceeding with this work.**
16. Is it the intention of OPEFM to make multiple contractor awards? **Response: The Office reserves the right award each group of schools to a separate contractor (2 awards) or both groups of schools to one contractor (1 award).**
17. What is the method to be used by DCPS to disperse calls across multiple contractors and school locations? **Response: Each Contractor will be assigned a group of schools. Work will be assigned to the Contractors based on the location of the work.**
18. Will the schools be "zoned" or otherwise grouped by contractor assignment, or will contractor be dispatched to any of the +/-130 locations? **Response: Zoned. See above.**
19. Who will be authorized to request work on behalf of OPEFM? **Response: This will be specified in the procedures referred to in question 1, above.**

20. How will OPEFM track call backs to the originally assigned contractor? **Response: This will be decided post-award and prior to execution of the contract.**
21. Will an authorized OPEFM agent be onsite to accept the work at completion? If not, what method is required for contractor to obtain acceptance of work performed?  
**Response: In many cases an OPEFM agent will be onsite to accept the work at completion. In those cases where an OPEFM agent cannot be present, inspectors will be dispatched within 24 hours to inspect and either approve or disapprove the work.**
22. B.1.3 – What’s considered “clocking in and out” on the part of the employee? Will hand written time-sheets and Field Work Orders meet the requirement? **Response: Yes.**
23. Please provide historical data on the number of service calls per year. Please break down this information by school and by trade category, i.e. plumbing, HVAC, etc.  
**Response: This information is not available.**
24. Is there an area in each school where spare parts can be stored? **Response: Spare parts will be the responsibility of the Contractor. The Contractor should NOT assume that there is space or a secure area to store spare parts at the school sites.**
25. Is there a current stock of spare parts or materials existing in each school? **Response: No.**
26. Please provide an attendee list for the pre-bid conference. **Response: Please see Addendum No. 1 issued on Friday, October 3, 2008 for this list.**
27. Section E.4.3 of the Executive Summary states the following: “Each Offer should provide a summary of no more than three pages of information contained in the following sections.” There are no following sections under E.4.3. Please indicate the sections you are referring to. If you are referring to E.4.4 – E.4.9, does this mean we can only have 3 pages for all of these sections or 3 pages per each E header? **Response: Please provide an executive summary of no more than 3 pages of the information asked for in sections E.4.4, E.4.5, and E.4.6. The full information requested in those sections can exceed 3 pages in length.**
28. Is there a page limit for the RFP? **Response: No.**
29. How will section E.4.7 Cost be evaluated? Will you average the values or will certain trades carry a heavier weight? Is there a formula you will use to determine the weighting and if so, what is it? **Response: OPEFM will evaluate the price component based on the estimated total cost of the contract. OPEFM has developed a spreadsheet that allocates the estimated amount of work by labor category. The hourly rates bid by each Offeror will be multiplied by the estimated number of hours for each labor category and these amounts will added together thus resulting in a total estimated**

cost. OPEFM does not intend to provide the estimated number of labor hours during the bid process.

30. How many contracts do you plan to award and will multiple awards be made to each Group under attachment 1? **Response: Please see response to question #16 above.**
31. Will contractors not awarded be debriefed on their RFP proposal score? **Response: Debriefings will be provided upon bidder's request after award has been made.**
32. Our office has not received the Form of Contract as indicated under A.2 Detailed Scope of Work. Once this is received, we may need further clarifications to the RFP. Will the deadline for questioning be extended since all of the contract documents were not provided prior to the last day for questions? **Response: The Form of Contract was distributed on October 3, 2008 as an attachment to Addendum No. 2. If an Offeror has further questions related to the Form of Contract, they may be submitted no later than close of business on Tuesday, October 7, 2008. Please note that an updated Form of Contracted is attached hereto, including a new Section 3.4 as described in question 1 above.**
33. Will the RFP due date change as responses to these questions may change our RFP format? **Response: The bid date remains unchanged. Proposals are due by Friday, October 10, 2008, at 5 pm.**
34. Will all questions asked with responses be forwarded to everyone on the bid list? **Response: Yes.**

## **Item #2**

The bid date remains unchanged. Proposals are due by Friday, October 10, 2008, at 5 pm.

- End of Addendum No. 2 -

## FORM OF CONTRACT

### CONTRACT FOR HVAC TECHNICIAN SERVICES GM-08-S-0922-FM

**THIS CONTRACT FOR HVAC TECHNICIAN SERVICES** ("Agreement") is entered into this \_\_\_\_\_ day of October 2008 by and between the District of Columbia government acting by and through its **OFFICE OF PUBLIC EDUCATION FACILITIES MODERNIZATION** ("Office") and \_\_\_\_\_ ("Contractor").

#### **WITNESSETH:**

**WHEREAS**, the Office is charged with maintaining the District of Columbia Public Schools ("DCPS") HVAC systems.

**WHEREAS**, the Office issued a Request for Proposals to engage a contractor to provide on-call technician services for the HVAC systems at various DCPS facilities.

**WHEREAS**, the Contractor submitted a proposal in response to the Request for Proposals, and the Office wishes to engage the Contractor to provide the requested services.

**WHEREAS**, the Office desires that the Project be completed over the course of the fiscal year, with this Agreement terminating on September 30, 2009.

**NOW, THEREFORE**, in consideration of the foregoing and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the parties to this Agreement agree as follows:

#### **Agreement:**

##### **Section 1     Scope of Work.**

**Section 1.1     General Scope of Work & Intent of Contract.** Subject to the terms and conditions of this Agreement, the Contractor shall provide all labor, supervision, tools, material, equipment, transportation, and management necessary to provide "on-call" maintenance and repair services including replacement to mechanical systems (the "Project") at the DCPS facilities listed on **Exhibit A** (the "Project Schools"). This Agreement will require the Contractor to provide any necessary maintenance and/or repair of DCPS HVAC systems, and be available to address any future HVAC problems as directed by the Office. The Contractor will be required to respond to on-call requests within 2 hours of notification by the Office.

**Section 1.2     Contractor's Operations.** At all times while this Agreement is in effect, the Contractor shall comply with the following requirements:

- .1     Dispatching Office.** The Contractor will be required to provide a staffed central office from which personnel are dispatched. At a minimum, this office shall be staffed between 7:00 am and 5:30 pm, Monday through Friday. The Contractor should also provide an “after hours” point of contact for dispatching staff on a 24/7 basis.
- .2     Work Records; Weekly Reports.** The Contractor shall maintain a job tracking system that, at a minimum, records: (i) the date and time a request was received by the Contractor; (ii) the date and time a crew was dispatched to the site; (iii) the date and time the crew arrived at the site; (iv) a description of the problem and corrective work required; (v) the amount of time spent on the site by the Contractor’s personnel; (vi) the materials and spare parts used by the Contractor; and (vii) the date and time the work or repair was accepted by OPEFM. The Contractor shall provide OPEFM with a report that summarizes all such activity on a weekly basis.
- .3     Time Cards.** The Contractor shall maintain a system that requires each employee to track his or her time on an hourly basis. At a minimum, such a system shall require each employee to clock in and out and to sign time cards.
- .4     Equipped Personnel.** The Contractor shall ensure that all of its personnel assigned to tasks on the contract are properly trained, equipped and, as necessary, licensed. Contractor personnel shall be provided with a fully equipped truck or service van that includes appropriate small tools and spare parts.
- .5     Qualified Personnel.** The Contractor will be required to provide personnel who are at least journeyman level in the following trade categories: (i) HVAC/refrigeration technician; (ii) welders; (iii) burner technicians; (iv) steam fitters; (v) plumbers; and (vi) electricians. All such personnel shall be properly licensed and fully qualified to perform the expected services.
- .6     Security Checks & Procedures.** The Contractor will be required to comply with all of DCPS standard security procedures. Contractor personnel will not be permitted to enter school facilities unless such personnel are properly “badged” in accordance with DCPS procedures, and the Contractor shall have available a sufficient pool of pre-screened and “badged” personnel to discharge its functions.

**Section 1.3     Work Procedures.** The Contractor will be required to provide supervision, labor, materials and equipment necessary to perform the “on-call” repair and maintenance services requested under its contract. The repair work for the projects’ scope include work activity such as chiller repair, boiler repair, boiler burner calibration, pump repair/replacement, terminal unit repair, and gas valve repair/replacement. In performing these activities, the Contractor shall comply with the following procedures:

- .1     Provide HVAC certified/licensed technicians to perform repair and maintenance services and adequate on-site supervision on a 24 hour basis. Contractor may be**

required to provide documented evidence of certification/licensure for any contractor personnel assigned to perform work under this contract.

- .2 Employ and have sufficient technical personnel capable of responding to 7 DCPS sites simultaneously.
- .3 Respond to all service calls within 2 hours of notification by OPEFM. Upon arrival at service call site, the Contractor shall determine the cause of the loss of service, the components affected and take corrective action in a manner that restores service as soon as practicable. Repair shall be made in a professional and timely manner for any units, ventilation equipment, conveyance ductwork, pneumatic controls, electronic controls, and/or any other component that makes up the HVAC system, including associated mechanical, plumbing and electrical/electronic connections. Contractor must submit for prior OPEFM review, prints/drawings, specifications and scopes of work for "on-call" service work activity where such documentation is required. Contractor shall test HVAC operations to ensure service has been restored. Tests must be conducted in accordance with ASME Code 2004 Section VI, and Department of Consumer & Regulatory Affairs (DCRA) regulations.
- .4 Notify OPEFM of any "temporary" repairs that are necessary due to the unavailability of parts or materials. Permanent repairs must be made upon receipt required parts/materials. OPEFM reserves the right to bring in any other contractor in order to complete a repair that is not completed by Contractor in a timely fashion.
- .5 All work must be performed with the least possible disruption to school/administrative operations and coordinated with the Contract Maintenance Services representative, Principal of the school and/or other site designee.
- .6 Contractor shall notify OPEFM of any conditions that potentially may cause a break in HVAC service if preventive maintenance is not performed.
- .7 Use repair and maintenance non-hazardous materials that meet the requirements established by OPEFM or obtain prior approval to use substitute materials. Any hazardous material that must be incorporated into a repair shall be approved for use, prior to being brought onto the worksite. The Contractor shall provide MSDS Sheets for all materials used on-site, whenever applicable.
- .8 Provide all equipments necessary to complete assigned work activity. Contractor shall be responsible for safeguarding their own materials, tools, and equipment. OPEFM shall not assume any responsibility for vandalism and/or theft of materials, tools and/or equipment.
- .9 Provide a company cellular telephone for employees on-site for making and receiving calls. The cellular telephone number must be provided to OPEFM.

Personal or business phone calls are not to be made on DCPS phones unless it is an "emergency".

- .10 All completed work shall be subject to inspection by one or more representatives of OPEFM. Service area must be restored to the condition that existed prior to the start of repair work with emphasis on any special finish damage that may have occurred during the repair. Any work that is found to not be in compliance with Federal, District and/or Local Safety/Fire codes shall be corrected at the Contractor(s) expense.
- .11 Contractor shall be responsible for the proper and safe removal and disposal of all debris and materials generated as part of the service repair.

**Section 1.4 Coordination with DCPS.** The Contractor will be required to coordinate its work with DCPS school activities. The work will be performed during the school year, and the Contractor may be required to work after hours or on weekends and holidays so as to not adversely impact educational activities. The Contractor will be required to develop work plans that are coordinated with and acceptable to the school principals.

**Section 1.5 Project Site Safety.** The Contractor will be required to ensure that its work is conducted in a safe manner and that appropriate barricades and other life safety procedures are employed to ensure the safety of students, teachers and school staff. All such construction barricades and life safety procedures shall be subject to the approval of the Office and its Program Manager.

**Section 2 Additional Work.** As may be requested from time to time by the Office, Contractor agrees to provide similar services at such other schools within the District of Columbia as may be requested by the Office. With regard to any such Work, the Contractor shall be compensated at the rates established in **Exhibit B** for such Work.

**Section 3 Contractor's Fees.**

**Section 3.1 Type of Contract.** This is a time and materials contract. Contractor shall be compensated at the hourly rates established in **Exhibit B** for the personnel classifications set forth therein. Other than the Cost of Materials, these rates will be the Offeror's sole compensation for work performed by such personnel and as such should include adequate amounts to cover the Offeror's labor, field equipment (i.e. small tools, transportation, trucks and vans, etc.), overhead, insurance and profit. **Exhibit B** includes a premium rate that shall apply to any calls for which work must be performed between the hours of 4:00 PM and 7:00 AM or which is required on weekends or on Federal Holidays.

**Section 3.2 Cost of Materials.** The Contractor shall be reimbursed for any parts or materials that are incorporated into the Project Schools. The Contractor shall be reimbursed for such parts and materials at the Contractor's actual cost for such parts and materials after taking into account any rebates or discounts earned by the Contractor. Within ten (10) days after this Agreement is executed, the Contractor shall provide the Office with a list of the typical parts and

materials that may be expected to be consumed by the Work and the current list price for each. The Contractor shall be entitled to a five percent (5%) markup on all such parts and materials.

**Section 3.3    Travel Time.** Contractor shall be compensated for reasonable travel time to the job site.

**Section 3.4    Prior Authorization.** For service calls that are estimated to cost less than \$500, Contractor shall be authorized to perform such work without any further approval from OPEFM ("Tier 1 Work"). For service calls that are estimated to cost between \$500 and \$2,500, Contractor shall be required to confirm that the work can be completed for this amount and will be required to notify OPEFM prior to undertaking the work ("Tier 2 Work"). For service calls that are estimated to cost more than \$2,500, Contractor shall be required to provide a written estimate and OPEFM authorization prior to proceeding with the work.

**Section 4        Term.**

**Section 4.1    Time of the Essence.** Time is of the essence in the performance of the Contractor's obligations under this Agreement.

**Section 4.2    Term.** This Agreement shall begin on October \_\_, 2008 and shall terminate on September 30, 2009. The Contractor shall be required to provide HVAC technician services for all of the Project Schools during the term of this Agreement.

**Section 4.3    Option Year.** The Office shall have the right to extend the term of this Agreement for an additional year beginning on October 1, 2009 and ending on September 30, 2010 (such period, the "Option Year"). In the event the Office desires to extend the Agreement to cover the Option Year, the Office shall give the Contractor written notice of such election at least sixty (60) days prior to the beginning of the Option Year. Promptly after issuing such notice, the Office and the Contractor shall meet to negotiate the exact services and the cost thereof that will be provided during the Option Year. In the event the Office and the Contractor cannot agree on such services and pricing, then the Office shall have the right to assign this work to another contractor or to perform such work with its own forces.

**Section 5        Changes.**

**Section 5.1    Changes Authorized.** The Office may, without invalidating the contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Office to the Contractor via written Change Directive or Change Order.

**Section 5.2    Executed Change Directive/Order Required.** Changes to the Contract may be made only by a written Change Directive or Change Order executed by the Office.

**Section 5.3    Prompt Notice.** In the event the Contractor encounters a situation which the Contractor believes to be a change to this contract, the Contractor shall provide the Office with prompt written notice of such event and the possible impact such event could have on cost and schedule. All such notices shall be given promptly, considering the then applicable

situations, but in no event more than ten (10) calendar days after encountering the situation. The Contractor acknowledges that the failure to provide such notice in a timely manner could limit or eliminate the Office's ability to mitigate such events, and thus, the Contractor shall not be entitled to an adjustment in the event it fails to provide prompt notice. The Contractor shall include provisions similar to this provision in all of its subcontracts.

**Section 5.4    Executed Change Orders Final.** The Contractor agrees that any Change Order executed by the Office and the Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, cumulative impact, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

**Section 5.5    Failure to Agree.** If the Contractor claims entitlement to a change in the contract, and the Office does not agree that any action or event has occurred to justify any change in time or compensation, or if the parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Office will unilaterally make such changes, if any, to the contract, as it determines are appropriate pursuant to the terms of this Agreement. The Contractor shall proceed with the Work and the Office's directives, without interruption or delay, and may make a claim as provided in Section 12 of this Agreement. Failure to proceed due to a dispute over a change request shall constitute a material breach of the contract and entitle the Office to all available remedies for such breach, including, without limitation, termination for default.

**Section 6        [intentionally omitted]**

**Section 7        Payments.**

**Section 7.1    Invoicing.** The Contractor shall bill the Office on a monthly basis. Each such invoice shall cover all of the work performed during the preceding month and shall be broken down by service call. For each such service call, the invoice shall include: (i) a listing of hours worked including the date(s) on which such labor was performed, the name of the worker, the classification of the worker and the hourly rate applicable to each such hour; (ii) a listing of parts and materials used; (iii) a brief description of the problem; (iv) a statement as to whether the problem was resolved; and (v) the school name and address.

**Section 7.2    Supporting Documentation.** The Contractor shall submit with each invoice cost backup supporting such invoice. Such back-up information shall include: (i) time sheets for all reimbursable labor; and (ii) a log of all materials used during that period.

**Section 7.3    Right to Withhold Payments.** The Office will notify the Contractor within fifteen (15) calendar days after receiving any invoice for payment of any defect in the invoice or the work which may result in the Office's declining to pay all or a part of the invoiced amount. The Office may withhold payment from the Contractor, in whole or part, as appropriate, if

- .1        the work is defective and such defects have not been remedied; or

- .2 the Office has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten calendar days of the Office's written demand, to provide the Office with a realistic and acceptable plan to recover the delays; or
- .3 the Contractor has failed to pay subcontractors promptly or has made false or inaccurate certifications that payments to Subcontractors or Suppliers are due or have been made; or
- .4 the Contractor is otherwise in substantial breach of the Contract (including, without limitation, failures to comply with the Economic Inclusion Requirements in Section 9 of these Special Provisions).

**Section 8      Subcontracts.** The Contractor shall perform the work with its own forces. In the event that the Contractor desires to engage one or more subcontractors to assist with the work, it shall advise the Office and obtain the Office's written approval of any such subcontractor. All subcontractors shall be required to comply with the insurance requirements set forth herein. In addition, the Contractor shall be responsible for all work performed by the subcontractors and shall assume the risk of the subcontractors' non-performance.

**Section 9      Economic Inclusion**

**Section 9.1      CBE Utilization.**

**Section 9.1.1** The Contractor shall ensure that Local, Small and Disadvantaged Business Enterprises will participate in at least 50% of the Contract. Of this amount, thirty-five percent (35%) must be awarded to entities that are certified as either Small or Disadvantaged Business Enterprises by the District of Columbia Local Business Opportunity Owner and twenty percent (20%) to entities that are certified as Disadvantaged Business Enterprises. The LSDBE certification shall be, in each case, as of the effective date of the subcontract. Supply agreements with material suppliers shall be counted toward meeting this goal.

**Section 9.1.2** The Contractor has developed a CBE Utilization Plan that is attached hereto as **Exhibit C**. The Contractor shall comply with the terms of the CBE Utilization Plan in making purchases and administering its Subcontractors and Supply Agreements.

**Section 9.1.3** Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an LSDBE company unless the Office approves of such removal. The Office may condition its approval upon the Contractor developing a plan that is, in the Office's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project.

**Section 9.2      First Source Agreement**

**Section 9.2.1** Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Office a list of current employees and

apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

**Section 9.2.2** The Contractor and its constituent entities shall comply with subchapter III of Chapter 11 Title 1, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services (“DOES”) prior to beginning Work at the Project site.

**Section 9.2.3** The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

**Section 9.2.4** The Contractor shall be responsible for: (i) including the provisions of this Section 9.2. in all subcontracts; (ii) collecting the information required in this Section 9.2 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in any reports required to be submitted by the Contractor pursuant to this Section 9.2.

## **Section 10     Termination for Convenience.**

The Office may at any time terminate this Agreement, in whole or specified part, for convenience. In such an event, the Contractor shall be entitled to receive compensation for services performed through the effective date of termination in accordance with the terms of this Agreement. In no event, however, shall the Contractor be entitled to recover lost profits or opportunity costs on the unperformed portion of work.

## **Section 11     Alternate Dispute Resolution.**

**Section 11.1** If the Contractor has complied with all provisions in Section 5 regarding changes, and the Office has denied the changes requested in a written Change Order proposal, or has failed to respond to a written Change Order proposal within thirty (30) calendar days, and the Contractor wishes to pursue a claim over the disputed item, it shall inform the Office, in writing, of its claim. The notice must be delivered to the Office within fifteen (15) calendar days after the Office's decision, or within thirty (30) calendar days after the written request for a Change Order, if the Office has failed to respond to the request. If the Contractor wishes to assert a claim over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered within fifteen (15) calendar days after the date the Contractor knew or should reasonably have known of the events giving rise to the claim or dispute.

**Section 11.2** The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought are not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim in arbitration with respect to the claimed items.

**Section 11.3** Unless the parties hereafter otherwise agree, and subject to the application of Section 11.2 above, all disputes arising from or in connection with the Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, shall first be referred to non-binding mediation in accordance with the American Arbitration Association's Construction Industry Mediation Rules.

**Section 11.4** Unless the parties hereafter otherwise agree, and subject to the application of Section 11.2 above, all disputes arising under or in connection with the Contract or its breach, or relating to the project, whether framed in contract, tort or otherwise, and which are not resolved by mediation, shall be resolved by binding arbitration. However, if a third party brings any claim against the Office, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Office may bring an action for defense or indemnification against the Contractor in the court in which such claim is being litigated; provided, however, that indemnification of the Office is limited to claims based upon bodily injury, including death, and/or physical damage to property (other than the Work itself) and only in the event that the Contractor was negligent. The arbitration panel shall be comprised of an individual designated by the Office, an individual designated by the Contractor, and an individual mutually agreeable to both the Office and the Contractor or selected pursuant to the rules of the American Arbitration Association if the parties cannot agree as to the third arbitrator. The arbitration process shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. In addition to such rules, the following shall also apply:

- .1 Each party shall give the other prompt access to any documents the other reasonably requests that relate to the dispute being resolved. If any disputes arise between the parties concerning document production, they may be reported to the arbitrator(s) by telephone, and the arbitrator(s) shall decide them promptly, based upon a telephone conference call or informal written submissions if the arbitrator(s) consider them necessary.
- .2 If any party considers deposition testimony necessary, upon request, the arbitrator(s) shall order such discovery. However, the arbitrator(s) shall endeavor to limit the number and extent of any such depositions.
- .3 Unless the parties hereafter agree to another location, arbitration hearings shall be conducted in Washington, D.C. at a location agreed upon by the parties.
- .4 The arbitrator(s) shall base their decision on a strict interpretation of the Contract, and on any relevant facts submitted by the parties via documentary evidence or sworn testimony, without bias against or partiality to either party. Any award shall include an award of attorneys' fees and the costs of arbitration in favor of the party that substantially prevails on the merits. The decision shall be in writing.

- .5 Any award of the arbitrator(s) shall be final and binding on the parties and judgment may be entered on the award by any court of competent jurisdiction.

**Section 12 Insurance.**

**Section 12.1 Required Insurance.** The Contractor will be required to maintain the following types of insurance throughout the life of the contract.

- .1 Commercial general public liability insurance ("Liability Insurance") against liability for bodily injury and death and property damage, such Liability Insurance written on an occurrence basis to be in an amount not less than Five Million Dollars (\$5,000,000.00) for liability for bodily injury, death and property damage arising from any one occurrence and Five Million Dollars (\$5,000,000.00) from the aggregate of all occurrences within each policy year. The policies shall contain blanket contractual coverage (including coverage for the indemnity clauses to be provided under the Agreement) and completed operations coverage (for 2 years beyond completion of the Work).
- .2 Workers' compensation providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.
- .3 Automobile Liability, including Hired and Non-Owned Auto Liability in the amount of at least One Million Dollars (\$1,000,000.00) for each occurrence for bodily injury and property damage.

**Section 12.2 Additional Insureds.** Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured the Office, the District of Columbia Public Schools, and the District of Columbia and shall not be cancelable or reduced without thirty (30) calendar days' prior written notice to the Office.

**Section 12.3 Waiver of Subrogation.** All such insurance shall contain a waiver of subrogation against the Office, the District of Columbia Public Schools, and their respective agents.

**Section 12.4 Strength of Insurer.** All insurance shall be placed with insurers that are reasonably acceptable to the Office and with an A.M. Best's rating of not less than a then-current rating of "A-" or better and a financial size category of Class XV or higher. All such insurers shall be licensed/approved to do business in the District of Columbia.

**Section 13 Miscellaneous Provisions.**

**Section 13.1 Service Contract Act Provision.** The Contractor agrees that the work performed under this Contract shall be subject to the Service Contract Act. The wage rates applicable to this Project are attached as **Exhibit D.**

**Section 13.2 False Claims Act.** The Contractor shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in D.C. Code § 2-308.14.

**Section 13.3 Retention of Records: Inspections and Audits.**

**Section 13.3.1** The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

**Section 13.3.2** The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Office and the required cost submissions in effect on the date of execution of the Office.

**Section 13.3.3** The Office, the District of Columbia government, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

**Section 13.3.4** The Contractor agrees to include the wording of this Section 13 in all its subcontracts in excess of Five Thousand Dollars (\$5,000.00) that directly relate to Project performance.

**Section 13.3.5** Audits conducted pursuant to this Section will be in accordance with generally accepted auditing standards with the results prepared in accordance with generally accepted accounting principles and established procedures and guidelines of the applicable reviewing or audit agency.

**Section 13.3.6** The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Office. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

**Section 13.3.7** The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.

**Section 13.4 Gratuities and Officers Not to Benefit Provisions.**

**Section 13.4.1** If it is found, after notice and hearing, by the Office that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or

given by the Contractor, or any agent or representative of the Contractor, to any official, employee or agent of the Office or the District with a view toward securing the Contract or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Contract, the Office may, by written notice to the Contractor, terminate the right of the Contractor to proceed under the Contract and may pursue such other rights and remedies provided by law and under the Contract.

**Section 13.4.2** In the event the Contract is terminated as provided in Section 13.4.1, the Office shall be entitled:

- .1 to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor; and
- .2 as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Office) which shall be not less than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

**Section 13.4.3** No member of, nor delegate to Congress, Mayor or City Council Member, nor officer nor employee of the District, nor officer nor employee of the Office shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom, and all agreements entered into by the Contracting Officer of the Office in which he or any officer or employee of the Office shall be personally interested as well as all agreements made by the Office in which the Mayor or City Council Member or officer or employee of the District shall be personally interested shall be void and no payments shall be made on any such contracts by the Office or by any officer thereof; but this provision shall not be construed or extend to the agreement if the share of or benefit to the member of, or delegate to Congress, Mayor or City Council Member, or officer or employee of the District is de minimis.

**Section 13.5 Ethical Standards For Office's Employees And Former Employees.** The Office expects the Contractor to observe the highest ethical standards and to comply with all applicable law, rules, and regulations governing ethical conduct or conflicts of interest. Neither the Contractor, nor any person associated with the Contractor, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of the District or the Office not in conformity with applicable law, rules or regulations. The Contractor shall not engage the services of any person or persons in the employment of the Office or the District for any Work required, contemplated or performed under the Contract. The Contractor may not assign to any former Office or District employee or agent who has joined the Contractor's firm any matter on which the former employee, while in the employ of the Office, had material or substantial involvement in the matter. The Contractor may request a waiver to permit the assignment of such matters to former Office personnel on a case-by-case basis. The Contractor shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each Subcontractor or vendor.

**Section 13.6 Anti-Deficiency Act.** The Office's obligations and responsibilities under the terms of the Contract and the Contract Documents are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§1341, 1342, 1349, 1350, 1351, (ii)

the D.C. Code 47-105, (iii) the District of Columbia Anti-Deficiency Act, D.C. Code §§ 47-355.01 - 355.08, as the foregoing statutes may be amended from time to time, and (iv) Section 446 of the District of Columbia Home Rule Act. Neither the Contract nor any of the Contract Documents shall constitute an indebtedness of the Office, nor shall it constitute an obligation for which the Office is obligated to levy or pledge any form of taxation, or for which the Office has levied or pledged any form of taxation. **IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. CODE § 1-204.46, NO DISTRICT OF COLUMBIA OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THE CONTRACT OR CONTRACT DOCUMENTS UNLESS SUCH AMOUNT HAS BEEN APPROVED, IS LAWFULLY AVAILABLE AND APPROPRIATED BY ACT OF CONGRESS.**

**IN WITNESS WHEREOF**, each of the parties to this Agreement has caused this Agreement to be signed by its duly authorized representative.

**OFFICE OF PUBLIC EDUCATION  
FACILITIES MODERNIZATION**

**By:** \_\_\_\_\_  
**Name:** Allen Y. Lew  
**Title:** Executive Director

**[Contractor]**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**Exhibit A**

**Project Schools**

**Exhibit B**

**Hourly Rates**

**Exhibit C**

**CBE Utilization Plan**

**Exhibit D**

**Service Contract Act Wage Rates**